

France - Council of State, 14 June 2010, M. A., n°320630

Country of Decision:

France

Country of Applicant:

Rwanda

Date of Decision:

14-06-2010

Citation:

CE, 14 juin 2010, M. A., n° 320630

Additional Citation:

CE, 14 June 2010, Mr. A., n° 320630

Court Name:

Council of State/Conseil d'Etat

Keywords:

Genocide

Family unity (right to)

Exclusion from protection

Relevant Legislative Provisions:International Law > [1951 Refugee Convention](#) [1] > [Art 1F](#) [2] > [Art 1F\(a\)](#) [2]International Law > [1951 Refugee Convention](#) [1] > [Art 1F](#) [2]European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [3] > [Art 4](#) [4] > [Art 4.3](#) [5]European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [3] > [Art 4](#) [4]European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [3] > [Art 12](#) [6] > [Art 12.2](#) [7]European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [3] > [Art 12](#) [6] > [Art 12.3](#) [7]

Headnote:

Serious reasons have to be established in order to apply the exclusion clause in Article 1F(a) of

the 1951 Refugee Convention, i.e. the material and intentional elements specific to the complicity.

Facts:

The applicant from Rwanda was selling beer in Gisanyi and carried out his business activities during the first months of the 1994 genocide. The French Office for the Protection of Refugees and Stateless Persons (Ofpra) excluded him from refugee status. This decision was confirmed by the Commission des Recours des Réfugiés (Refugee Appeals Commission) CRR/CNDA. The applicant argued that the CRR/CNDA decision excluding him from refugee status on the ground that there were serious reasons for considering that he was aiding and abetting the Rwanda genocide should be quashed by the Council of State.

Decision & Reasoning:

The Council of State found that the CRR/CNDA should have gathered and established serious reasons for considering that the applicant could personally be considered as having contributed to or facilitated the implementation of the genocide, instead of simply inferring this conclusion from the context in which his business activities were taking place.

The Council of State also considered that the CRR/CNDA should have explained the manner in which the social and economic status of the applicant effectively gave him a sufficiently accurate personal knowledge of the consequences of the pursuit of his activities on the ongoing genocide and which enabled the CRR/CNDA to consider that he had knowingly decided to lend his support to it. Instead the CRR/CNDA simply inferred from the applicant's status that he could not ignore the use which was made of the beer he was selling.

The Council of State concluded that the CRR/CNDA made a legal error by not fulfilling its obligation to establish the serious reasons which led it to apply the exclusion clause in Article 1F(a) , and failed to establish the material and intentional elements required to prove the applicant's complicity.

Outcome:

The CRR/CNDA decision excluding the applicant from refugee status was quashed. The case was referred to the CNDA.

Observations/Comments:

In a decision made on 10 February 2011 (CNDA, 10 février 2011, M.K., n°03038999), the CNDA considered that the facts of the case were not established and that the applicant's alleged fears of persecution were not well-founded.

Nevertheless, the applicant was granted refugee status on the basis of family unity, since his wife, a Rwandese national with whom he married before she applied for asylum, was granted refugee status.

Attachment(s):



[CE 20100614 320630.pdf](#)[8]

Other sources cited:

[1948 Convention on the Prevention and Punishment of the Crime of Genocide](#) [9]

[UN Security Council, Statute of the International Criminal Tribunal for Rwanda \(as last amended on 13 October 2006\), 8 November 1994](#) [10]

Links:

[1] <http://www.asylumlawdatabase.eu/en/content/1951-refugee-convention>

[2] <http://www.asylumlawdatabase.eu/en/content/1951-refugee-convention#1f>

[3] <http://www.asylumlawdatabase.eu/en/content/qualification-directive>

[4] <http://www.asylumlawdatabase.eu/en/content/qualification-directive#Art 4 QD>

[5] <http://www.asylumlawdatabase.eu/en/content/qualification-directive#Art%204%20QD>

[6] <http://www.asylumlawdatabase.eu/en/content/qualification-directive#Art 12 QD>

[7] <http://www.asylumlawdatabase.eu/en/content/qualification-directive#Art%2012%20QD>

[8] <https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/CE%2020100614%20320630.pdf>

[9] <https://www.asylumlawdatabase.eu/en/content/en-1948-convention-prevention-and-punishment-crime-genocide>

[10] <https://www.asylumlawdatabase.eu/en/content/en-statute-international-criminal-tribunal-rwanda-last-amended-13-october-2006>